

Tuesday, February 26, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Stewart S. Mortensen, 252253 (UT)

July 25, 2001, \$5,964.00 Tax

For Petitioner:

Stewart Mortensen, Taxpayer

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the vessel was purchased for use in the state.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Herb's United Drugs, Inc., 217922 (AS)

10-1-99 to 3-31-02, \$4,491.47 Tax

For Petitioner:

Herbert L. Weinberg, Representative

Jeffrey Marcus, Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that certain of its sales were exempt sales of prescription medicines.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Erhart's Food Service & Management, Inc., 341726 (EA)

10-1-01 to 9-30-04, \$13,373.12 Tax

For Petitioner:

H. Palu Tanna, Taxpayer

Dianne Tanna, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that adjustments are warranted to the disallowed claimed exempt sales to the U.S. Government.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Visual Merchandising Group, Inc., 318329 (FHB)

1-1-04 to 9-30-04, \$20,000.00 Successor Liability

For Petitioner:

Patrick Leone, Representative

Bruce Moon, Taxpayer

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable as a successor to Delectable Display, Inc.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Hyundai Motor America, 331894 (EA)

4-1-99 to 3-31-02, \$24,196.00 Tax

For Claimant:

Bill Kerr, CPA

Matt Williams, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant has established that the transactions at issue were arm's-length leases.

Whether claimant has established that the rates it charged its employees were the proper measure of tax.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Steve W. Schechter, 304900 (UT)

August 14, 2002, \$33,094.00 Tax, \$00.00 Penalty

For Petitioner:

Cris J. Wenthur, Attorney

Steve Schechter, Taxpayer

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner purchased a vessel for use in California.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Sierra Textile Company, L.P., 301401 (EH)

10-1-01 to 12-31-03, \$34,509.81 Tax

For Petitioner:

Petru Tivadar, Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner incurred use tax with respect to fabric sample books.

Whether relief of the tax is warranted because of a prior audit.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Marcelo Co, 308417, 325521 (EH)

1-1-96 to 6-30-03, \$43,461.32 Tax, \$21,731.23 Fraud Penalty, \$4,346.11 Failure to File Penalty
For Petitioner: Nate Green, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the determination is timely for the entire audit period.

Whether an adjustment is warranted for additional sales for resale.

Whether the Department has met its burden of establishing that petitioner knowingly operated his business without a permit for the purpose of evading taxes.

Whether petitioner has shown reasonable cause for relief from the failure to file penalty.

Whether the claim for refund should be granted.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:30 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ock Ja Cho Lee, 357034 (AS)

4-1-03 to 9-30-04, \$7,702.03 Tax

Seung Suk Lee, 357033 (AS)

10-1-04 to 4-10-06, \$36,136.16 Tax

For Petitioner:

Ock Ja Cho Lee, Taxpayer

Seung Suk Lee, Taxpayer

Jeannie Lee, Witness

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners have established that any of their disallowed claimed exempt sales in interstate commerce were, in fact, exempt sales in interstate commerce.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Soveida A. Loza, 271980 (AC)

4-01-00 to 3-31-03, \$39,925.87 Tax, \$9,981.51 Fraud Penalty

Elidia Gonzalez Ledesma, 271978 (AC)

10-1-00 to 9-30-03, \$17,770.28 Tax, \$4,885.96 Fraud Penalty

For Petitioner: Harjeet S. Chana, Enrolled Agent

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of taxable sales based on a markup of cost is excessive.

Whether the Department has met its burden of proof with respect to the imposition of the fraud penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Continental Lab Products, Inc., 333342 (FH)

7-1-01 to 6-30-04, \$51,544.98 Tax, \$5,154.53 Negligence Penalty, \$1,570.04 Double Negligence Penalty

For Petitioner: Michael Caplinger, CPA

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that it is not liable for use tax on purchases of parts for its Phoenix project account relating to the ApolloThermocycler instrument because those parts were purchased for resale.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mark Gorin, 317044 (EH)

10-1-96 to 1-31-03, \$16,733.86 Tax, \$33,940.48 Penalties

For Petitioner: A. Lavar Taylor, Attorney

Mark Gorin, Taxpayer

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is a responsible person who liable for MGA's outstanding tax liabilities pursuant to Revenue and Taxation Code section 6829.

Whether the determination issued to petitioner on June 29, 2005, as a responsible person for the unpaid liabilities of MGA was timely for the liability period October 1, 1996, through January 31, 2003.

Whether petitioner's personal liability under section 6829 was discharged in his Chapter 7 bankruptcy.

Whether the penalties assessed to MGA and included in the determination to petitioner should be relieved.

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Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings. Mr. Gilman entered into the record documents submitted by individuals. (Exhibit 2.18.)

Speakers: Bob Handy, Military Veteran, Chair of Veterans United for Truth, and Chair of Veterans' Caucus of the California Democratic Party
William Connell, Military Veteran and owner of All American Surf Dog
Paul Lamberton, Military Veteran and representing Spirit of '76
Renee Fenton, friend of Military Veteran and mother of service member
Michael Warnken, friend of Military Veteran
Don Duncan, California Campaign Director, Americans for Safe Access
Jennifer Talbert, Vice President, G&M Oil Company Inc.
Andrea Munoz, Permit Coordinator, G&M Oil Company Inc.
Raul Cortez, Director of Government Relations and Event Planning,
Neighborhood Market Association

Ms. Yee requested Dr. Chu to agendize AB 3009 (Brownley) for the March Legislative Committee.

Mr. Leonard directed staff to review calculations of itinerant veteran vendors selling hot foods to provide realistic revenue loss estimates related to proposed AB 3009.

Ms. Yee thanked district staff for their sensitivity and ongoing professionalism in working with medical marijuana dispensaries.

The Board directed staff to report at its March Board Meeting the status of improving policies and procedures to expedite issuance of cigarette and tobacco licenses.

Mr. Leonard suggested providing training to field office sales and use tax staff on cigarette tax as part of their general fund duties, setting a goal of empowering staff at the counter to issue cigarette licenses the same day of application.

Ms. Yee directed staff to investigate whether programming delays are negatively impacting attempts to improve processes in areas of the Board of Equalization other than cigarette and tobacco license registration.

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The Board directed staff to develop opportunities to partner with industry and community groups to foster working relationships with cigarette and tobacco retailers and improve taxpayer education.

Exhibits to these minutes are incorporated by reference.

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearings.

Speakers were invited to address the Board, but there were none.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

These matters were deferred to the following day.

LEGAL APPEALS MATTER, ADJUDICATORY

These matters were deferred to the following day.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Finn Moller, 288211*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board made the following orders:¹

Jun Ja Hwang, 259556 (AS)

7-1-00 to 6-9-03, \$35,339.11 Tax, \$3,533.96 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Finn Moller, 288211 (AS)

4-1-00 to 6-30-01, \$149,107.82 Tax, \$47,263.80 Penalties

Action: The Board took no action.

Nelma International, Inc., 336134 (AC)

1-1-01 to 12-31-03, \$77,073.36 Tax

Action: Redetermine as recommended by the Appeals Division.

¹ The Board rescinded this action the following day.

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Angel M. Becerra, 341586 (AA)

1-1-01 to 9-30-03, \$181,192.79 Tax, \$18,119.30 Negligence Penalty, \$14,511.27 Amnesty Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Paul Joseph Hibler, 332012 (AC)

10-1-96 to 9-30-99, \$361,093.79 Tax, \$107,783.61 Fraud Penalty, \$42,993.22 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Peter Peter Kourkoulis, 349458 (EAA)

1-1-99 to 9-30-99, \$5,604.97 Tax, \$2,576.51 Penalty

Action: Redetermine as recommended by the Appeals Division.

Robert L. Arcinaga, 353094 (EH)

10-1-97 to 5-31-02, \$17,455.23 Tax, \$13,714.89 Penalties

Action: Redetermine as recommended by the Appeals Division.

Michael A. Long, 358973 (AA)

1-1-03 to 6-30-03, \$26,237.13 Tax, \$5,258.20 Penalties

Action: Redetermine as recommended by the Appeals Division.

Abdallah E. Bezan, 328679 (EH)

7-1-00 to 6-30-03, \$44,266.01 Tax, \$7,826.85 Penalty

Action: Redetermine as recommended by the Appeals Division.

Smiland Paint Company, 52753, 135675, 139295, 165511, 214982, 259644, 306866, 346955 (MT)

1997, \$35,996.00 Fee Assessment

1998, \$37,784.00 Fee Assessment

1999, \$40,963.00 Fee Assessment

2001, \$38,284.00 Fee Assessment

2002, \$46,314.00 Fee Assessment

2003, \$46,967.00 Fee Assessment

2004, \$00.00 Fee Assessment

2005, \$00.00 Fee Assessment

Action: Redetermine as recommended by the Appeals Division.²

Ahmad Moussavi and Masoumeh Jefari, 417473 (ET)

May 31, 2007, \$1,275.46 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Jasbir Singh, 423120 (ET)

August 21, 2007, \$379.44 Approximate Value

Action: Determined that staff properly seized the tobacco products.

² The Board rescinded this action the following day and took no action on this item.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Christina Hanzel, 383409; Byron Hoffman, 381469; Thomas Jones, 383406; Elizabeth Magness, 381472; Shawn Mills, 402021; Steven R. Olmos, 342009; Marc Pretscher, 393425; and, Margaret Rogers, 382827.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Vincent Castell, 383701

2004, \$4,235.00 Tax, \$1,058.75 Late Filing Penalty, \$1,058.75 Notice and Demand Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Andrea Erickson, 381470

2004, \$13,039.00 Tax, \$3,259.75 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Christina Hanzel, 383409

2004, \$4,518.00 Tax, \$1,129.50 Late Filing Penalty, \$1,421.50 Notice and Demand Penalty
Action: The Board took no action.

Esther Jones, 383407

2004, \$854.00 Tax, \$213.50 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Raymond Livernois, 381161

2004, \$7,551.00 Tax, \$1,887.75 Late Filing Penalty, \$1,887.75 Notice and Demand Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

George Saffas, 383408

2004, \$2,747.00 Tax, \$686.75 Late Filing Penalty, \$686.75 Notice and Demand Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

John S. Ballard, 378328

2002, \$777.00 Tax, \$194.25 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

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John S. Ballard, 383699

2004, \$5,277.00 Tax, \$1,319.25 Late Filing Penalty, \$1,319.25 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Arturo A. Cueva, 384279

2004, \$1,304.00 Tax, \$326.00 Late Filing Penalty, \$ 526.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Tennison Dong, 384280

2004, \$31,715.00 Tax, \$7,928.75 Late Filing Penalty, \$7,928.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Carol Grant, 383405

2004, \$2,059.00 Tax, \$1,029.50 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Richard Grant, 381468

2004, \$6,272.00 Tax, \$1,568.00 Late Filing Penalty, \$1,568.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

Charles A. Harris, 381473

2004, \$4,049.00 Tax, \$1,012.25 Late Filing Penalty, \$1,012.25 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Byron Hoffman, 381469

2004, \$5,798.00 Tax, \$2,899.00 Penalties

Action: The Board took no action.

Thomas Jones, 383406

2004, \$8,451.00 Tax, \$2,112.75 Late Filing Penalty, \$2,112.75 Notice and Demand Penalty

Action: The Board took no action.

Benjamin Killen, 383404

2004, \$1,592.00 Tax, \$398.00 Late Filing Penalty, \$398.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Eldo Klingenberg, 381471

2004, \$2,524.00 Tax, \$631.00 Late Filing Penalty, \$631.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Elizabeth Magness, 381472

2004, \$105.00 Tax, \$100.00 Late Filing Penalty, \$174.50 Failure to File Penalty, \$120.00 Filing Enforcement Fee

Action: The Board took no action.

Shawn Mills, 402021

2001, \$8,151.00 Tax, \$2,039.00 Late Filing Penalty, \$852.28 Post-Amnesty Penalty

Action: The Board took no action.

Steven R. Olmos, 342009

2004, \$3,433.00 Tax, \$858.25 Late Filing Penalty, \$858.25 Notice and Demand Penalty

Action: The Board took no action.

Anthony Oropeza, 382832

2004, \$2,078.00 Tax, \$519.50 Late Filing Penalty, \$519.50 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Marc Pretscher, 393425

2004, \$12,202.00 Tax, \$3,050.50 Late Filing Penalty, \$3,050.50 Notice and Demand Penalty

Action: The Board took no action.

James Robertson, 388432

2004, \$3,519.00 Tax, \$1,759.50 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Margaret Rogers, 382827

2004, \$1,923.00 Tax, \$480.75 Late Filing Penalty, \$533.25 Failure to File Penalty, \$120.00 Filing Enforcement Fee

Action: The Board took no action.

Richard Shirasawa, 384459

2004, \$6,012.00 Tax, \$1,503.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Jintau Two, 377464

2004, \$12,245.00 Tax, \$3,061.25 Late Filing Penalty, \$3,061.25 Notice and Demand Penalty
Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Judy Walther, 383468

2004, \$2,059.00 Tax, \$514.75 Late Filing Penalty, \$514.75 Failure to File Penalty, \$120.00 Filing Enforcement Fee
Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Benjamin R. Du and Carmela L. Du, 339310

1999, \$288,938.00 Claim for Refund
Action: Approve the opinion on petition for rehearing.

Thomas Jones, 346184

2003, \$8,006.00 Tax, \$2,001.50 Penalties, \$1,000.00 Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Paramount Pictures Corporation, 400362 (AS)

7-1-00 to 9-30-03, \$1,235,863.39
Action: Approve the redetermination as recommended by staff.

P Q Corporation, 414193 (OHB)

1-1-02 to 3-31-06, \$122,818.45
Action: Approve the redetermination as recommended by staff.

Gondola Adventures, Inc., 395451 (EAA)

7-1-02 to 6-30-05, \$58,022.67
Action: Approve the redetermination as recommended by staff.

BASF Building Systems, LLC, 386869 (OHA)

7-1-03 to 6-30-04, \$136,274.55
Action: Approve the redetermination as recommended by staff.

Rosies BBQ Grillery, Inc., 154365 (AC)

10-1-95 to 8-14-01, \$439,448.34
Action: Approve the redetermination as recommended by staff.

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Praxair Distribution, Inc., 429944 (OHA)

8-1-07 to 8-31-07, \$100,516.80

Action: Approve the relief of penalty as recommended by staff.

Dal-Tile SSC West, Inc., 429956 (OHC)

8-1-07 to 8-31-07, \$8,245,020.00

Action: Approve the relief of penalty as recommended by staff.

Heller Financial Leasing, Inc., 418111 (OHA)

4-1-02 to 6-30-02, \$707,878.00

Action: Approve the denial of claim for refund as recommended by staff.

International Surface Prep Group (TX), Inc., 341990 (OHC)

1-1-04 to 12-31-04, \$259,716.00

Action: Approve the denial of claim for refund as recommended by staff.

HSN Interactive, LLC, 309191 (OHA)

1-1-02 to 9-30-05, \$227,477.69

Action: Approve the denial of claim for refund as recommended by staff.

Home Shopping LP, 430110 (OHA)

10-1-02 to 12-31-04, \$93,918.21

Action: Approve the denial of claim for refund as recommended by staff.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
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Stewart S. Mortensen, 252253 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Erhart's Food Service & Management, Inc., 341726 (EA)

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard suggested that staff write a letter to each base commander of an active military installation within California to provide the commander information regarding when sales qualify as exempt sales to the military and when sales are subject to sales tax even if they involve military personnel or reimbursement by the military.

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Visual Merchandising Group, Inc., 318329 (FHB)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to pursue collection from the prior owner before the petitioner in the matter of *Visual Merchandising Group, Inc.*, 318329.

Hyundai Motor America, 331894 (EA)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board. Additional time will be allowed as needed.

Steve W. Schechter, 304900 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Marcelo Co, 308417, 325521 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ock Ja Cho Lee, 357034 (AS)

Seung Suk Lee, 357033 (AS)

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu and Ms. Yee voting no, Ms. Mandel abstaining.

The Board deferred consideration of this matter to the March Sacramento meeting.

SALES AND USE TAX APPEALS HEARINGS

Cecilia Banck May, 315695 (AR)

4-1-01 to 6-30-02, \$55,301.00 Tax, \$6,640.10 Late Payment Penalty, \$7,712.14 Amnesty Penalty
For Petitioner: Appearance Waived

For Sales and Use Tax Department: Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the determination issued to petitioner for liability under Revenue and Taxation code section 6829 was issued timely.

Whether petitioner is personally liable for the unpaid tax liability of CMARK for the period from April 1, 2001, through June 30, 2002.

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Whether petitioner has established reasonable cause to provide relief from the penalty for CMARK's late payment of the liability reported on its sales and use tax returns
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Bejac Corporation, 305002 (EA)

4-1-00 to 6-30-03, \$21,067.55 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to relief from the use tax due with respect to three sales of fixed assets based on prior audit advice.

Whether petitioner is entitled to relief from the tax it owes as a result of having netted freight-in charges from reported sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 26, 2008**

Soveida A. Loza, 271980 (AC)

Elidia Gonzalez Ledesma, 271978 (AC)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Continental Lab Products, Inc., 333342 (FH)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mark Gorin, 317044 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tuesday, February 26, 2008

SALES AND USE TAX APPEALS HEARING

Antonia K. Elhajnasr, 298887 (GH)

10-1-01 to 3-31-04, \$84,296.22 Tax, \$8,429.63 Negligence Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether the Sales and Use Tax Department correctly disallowed claimed nontaxable sales for food.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Diane Olson, Chief, Board Proceedings Division, made announcements regarding the following matters: *Deborah A. Smith*, 257883, has been deferred for settlement; *Anna Berardini*, 288368, has been postponed due to new representation; and, *Vector Design, Inc.*, 255265, has been deferred due to illness.

The Board adjourned at 4:15 p.m.

The foregoing minutes are adopted by the Board on April 8, 2008.